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LLC*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KIMBERLY YANG and GABRIELA  
SOLANO, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

LIFETECH RESOURCES LLC,

Defendant.

Case No.: 4:19-CV-05811-HSG

**CLASS ACTION**

**Defendant Lifetech Resources LLC's  
Administrative Motion for Leave To  
Exceed Page Limit for Motion To  
Compel Arbitration, Dismiss the First  
Amended Complaint, and/or Strike  
Class Allegations**

**[Pursuant to Civ. L.R. 7-11]**

**[Declaration of Stephen R. Smerek filed  
concurrently with Motion]**

Dept.: Courtroom 2 (Oakland Division)  
Judge: Hon. Haywood S. Gilliam, Jr.

FAC Filed: January 6, 2020  
Complaint Filed: September 17, 2019  
Trial Date: TBD

**NOTICE OF MOTION AND MOTION FOR LEAVE TO EXCEED PAGE LIMIT  
FOR DEFENDANT'S MOTION TO COMPEL ARBITRATION, DISMISS THE  
FIRST AMENDED COMPLAINT, AND/OR STRIKE CLASS ALLEGATIONS**

Pursuant to Civil Local Rule 7-11, Defendant Lifetech Resources LLC ("Lifetech") hereby submits this Motion for Administrative Relief ("Administrative Motion"), and moves this Court for leave to exceed the limitation of 25 pages for briefs and memoranda set forth in Civil Local Rules 7-2(b) and 7-4(b) regarding Lifetech's Motion To Compel Arbitration, Dismiss the First Amended Complaint, and/or Strike Class Allegations ("Motion to Dismiss").

Lifetech requests up to an additional five (5) pages for the Memorandum in support of its Motion to Dismiss, which will not exceed thirty (30) pages in total if the Court grants this Administrative Motion.

The Administrative Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Stephen R. Smerek, and the Proposed Order, as well as the Court's file in this action, including any other written or oral evidence, or argument of counsel, that may be presented prior to the Court's ruling on the Administrative Motion.

Dated: January 17, 2020

**FOLEY & LARDNER LLP**

Stephen R. Smerek

Nicholas J. Fox

Daniella M. Gutierrez

/s/ Stephen R. Smerek

Stephen R. Smerek

Attorneys for Defendant Lifetech  
Resources LLC

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. Relief Requested in Administrative Motion**

Lifotech requests up to an additional five (5) pages for the Memorandum in support of its Motion to Dismiss, which will not exceed thirty (30) pages in total if the Court grants this Administrative Motion.

### **II. Timing of Relief Sought**

Lifotech's Motion to Dismiss is currently due on Monday, January 20, 2020. (D.I. 23.) Although the deadline to file is also a Court holiday (*see* Fed. R. Civ. P. 6(a)(6)), Lifotech still intends to file pursuant to the briefing schedule agreed to by the Parties and ordered by the Court.

### **III. Relevant Facts**

In response to Plaintiff Kimberly Yang's Complaint, Lifotech filed a motion to compel arbitration, dismiss the Complaint, and/or strike class allegations. (D.I. 17.)<sup>1</sup> Prior to Lifotech's filing of that motion, Plaintiff Yang indicated that she would file her opposition to the motion based on a briefing schedule agreed to by the Parties and entered by the Court. (D.I. 16 at 5:20-21.) Plaintiff also indicated that she did not anticipate any amendments to the Complaint, subject to the Court's ruling on Lifotech's motion. (*Id.* at 6:2-3.)

Instead of opposing Lifotech's motion, Plaintiff Yang elected to file a First Amended Complaint ("FAC") pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. (D.I. 20.) The FAC does not include any new allegations against Lifotech, but adds a new named plaintiff, Gabriela Solano, in a transparent effort to avoid arbitration. (*See id.*)

In response to the Court's Order to Show Cause (D.I. 21), Lifotech noted that the Complaint—to which Lifotech's prior motion was directed—was no longer the operative pleading in light of the FAC. (D.I. 22 at 2:6.) Lifotech also informed the Court that it intended to file a renewed Motion to Dismiss, and that the Parties had agreed on a briefing schedule such that the Parties and the Court could keep the original hearing date of March

<sup>1</sup> Citations to specific portions of the Docket are to the ECF pagination.

12, 2020. (*Id.* at 2:11-14.) The Court subsequently entered an Order finding Lifetech’s prior motion was moot, and approving the Parties’ proposed briefing schedule on Lifetech’s Motion to Dismiss. (D.I. 23)

#### 4 **IV. Lifetech’s Attempt To Obtain Stipulation**

5 On January 15, 2020, Lifetech’s counsel inquired whether Plaintiffs would stipulate  
6 to increase the page limit for Lifetech’s Motion to Dismiss by up to 5 pages (from 25 to 30  
7 pages), with a reciprocal increase for Plaintiffs’ opposition. (*See* Declaration of Stephen  
8 R. Smerek [“Smerek Decl.”] at ¶ 4.) Plaintiffs’ counsel rejected this proposal, necessitating  
9 the filing of this Administrative Motion. (*Id.*) *See also* Civ. L.R. 7-11 and 7-12.

#### 10 **V. Legal Authority**

11 Civil Local Rule 7-11 authorizes a party to move “to exceed otherwise applicable  
12 page limitations . . . .” Civ. L.R. 7-11.

#### 13 **VI. Discussion of Relief Requested**

14 Lifetech’s request for up to five additional pages is warranted here to address the  
15 impact of the new named plaintiff on Lifetech’s motion to compel arbitration. Lifetech’s  
16 original memorandum in support of its Motion to Compel Arbitration, Dismiss the  
17 Complaint, or Strike the Class Allegations—which essentially encompassed three different  
18 motions—met the page limit of 25 pages. (D.I. 17) Because the FAC does not include any  
19 change to the substantive allegations, the main substance of the new motion is likewise  
20 materially identical to the original motion.

21 However, the newly added plaintiff, Gabriela Solano, did not make her purchase  
22 online at Nordstrom.com (unlike Plaintiff Yang, who made her purchase online over two  
23 years ago). Thus, Lifetech reasonably needs a few additional pages to address the impact  
24 that the addition of Plaintiffs Solano has on Lifetech’s Motion to Compel arbitration.  
25 Therefore, Lifetech requests up to five additional pages for the Memorandum in support of  
26 its Motion To Compel Arbitration, Dismiss the First Amended Complaint, and/or Strike  
27 Class Allegations.

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1 **VII. Conclusion**

2 For the reasons set forth above, Defendant Lifetech Resources LLC respectfully  
3 requests that this Court grant Lifetech leave to file a Memorandum in support of its Motion  
4 to Dismiss not to exceed thirty (30) pages in length.  
5

6 Dated: January 17, 2020

**FOLEY & LARDNER LLP**

Stephen R. Smerek

Nicholas J. Fox

8 /s/ Stephen R. Smerek

9 Stephen R. Smerek

10 Attorneys for Defendant Lifetech  
Resources LLC  
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